

CHAMBER SUMMONS NO.1797 OF 2003
IN
S.C.SUIT NO.1641 OF 1985

1. The present Chamber Summons is taken out for bringing the legal heirs of defendant on record and for setting aside abatement. I have heard the parties. Sufficient ground has been made out in affidavit which has been filed in support of Chamber Summons. In view of the Judgment of the Apex Court in the case of Mithailal Dalsangar Singh and others Vs. Annabai Devram Kini and Others reported in AIR 2003 SUPREME COURT 4244 the Apex Court has held in para 9 as under:

"9. The Courts have to adopt a justice oriented approach dictated by the upper most consideration that ordinarily a litigant ought not to be denied an opportunity of having a lis determined on merits unless he has, by gross negligence, deliberate inaction or something akin to misconduct, disentitled himself from seeking the indulgence of the Court. The opinion of the trial Judge allowing a prayer for setting aside abatement and his finding on the question of availability of 'sufficient cause' within the meaning of sub rule (1) of Rule (9) of Order 22 and of Section 5 of the Indian Limitation Act 19063 deserves to be given weight, and once arrived at would not normally be interfered with by superior jurisdiction."

2. In view thereof I grant the Chamber Summons in terms of prayer clause (a), (b) (c) and (d) of the same. Chamber Summons disposed of accordingly. No order as to costs.